

# Town of Union

## PLAN COMMISSION MEETING

### Minutes of June 9, 2008

---

The Town of Union Plan Commission meeting was called to order on Monday, June 9, 2008 at the Eager Free Public Library, 39 W. Main St., Evansville, WI at 6:03 p.m. by Doug Zweizig, Co-Chairman. Members present included Plan Commission members Doug Zweizig, Eric Larsen, Doug Lee, Kim Gruebling, Dave Pestor, and Renee Exum. Town Board Chairman Kendall Schneider, Town Supervisors George Franklin and Don Krajeck, Attorney Matt Dregne, Building Inspector Bob Fahey, Town Engineer Greg Hofmeister, and Clerk Regina Ylvisaker were also in attendance.

Tom Alisankus sat in to represent the Citizens Committee.

Zweizig confirmed that all Plan Commission members had reviewed both the original and current versions of the draft Large Wind Energy Ordinance (LWEO), as well as the correspondence from Attorney Matt Dregne regarding legal issues raised with the ordinance. Zweizig stated the intent of the Plan Commission was to hold a second public hearing on the ordinance at their regularly scheduled June 26, 2008 meeting.

Zweizig then suggested drafting an agenda of items to address during tonight's meeting, and took suggestions from Commission members:

Eric Larsen: definition of what exactly is meant by "health & safety" with regard to the ordinance.

Kim Gruebling: would like to go through draft ordinance page by page, checking for questions and issues on each page.

Doug Lee: does quality of life come under health and safety?

Matt Dregne: felt there were several "big picture questions" to be addressed:

1. Regarding State regulatory framework on wind energy, State law may preempt Town authority to regulate turbines with a capacity of 100 megawatts or larger. Does the Town want to exempt those facilities (100mw and higher) from the ordinance, or include in ordinance?
2. Adoption of the Small Wind Energy Ordinance (SWEО) was tabled pending completion of the Large Wind Energy Ordinance; are small wind energy facilities going to be governed by a different ordinance, and large facilities regulated by the current draft ordinance?
3. Does the Town want to address blasting, road maintenance, and other similar issues within the LWEO? Are they addressed somewhere else already, i.e. zoning code?

Beyond "big picture" questions, when it comes to an ordinance that regulates large wind energy, ultimately the key issues are 1) how to deal with setback issues; 2) how to address concerns raised about noise; and 3) how those two things work together or don't work together. How will the Plan Commission go about answering those two questions? What is appropriate for setback or noise? Once a policy decision is made, the Commission can look at how an ordinance can be used for enforcement. At this time the LWEO is essentially a licensing ordinance.

#### **Which types of turbines to include in LWEO?**

Dregne stated that if small wind turbines generate the same noise as large wind turbines, they should be governed by the same regulations. If they do not generate the same noise, it needs to be articulated why they are different and why they are regulated differently.

Renee Exum believes small and large wind turbines are completely different in terms of noise, setbacks, etc. and comparing the two is like comparing apples to oranges. Gruebling believes regulation of small and large wind turbines is two separate issues as well. Felt combining the two in one ordinance would create a cumbersome ordinance.

Zweizig feels that, with regard to State regulation of 100mw+ turbines, if the State's authority overrides the Town, the Town should not attempt to regulate said turbines in its ordinance. Although Dregne had developed an argument for the Town regulating such turbines, he felt it would be a tough argument to make and difficult to win in court.

Don Krajeck stated that he was in attendance at a recent Wisconsin Towns Association meeting during which these issues were discussed. It was the feeling of the WTA that although Towns cannot regulate 100mw+ turbines, having an ordinance in place may provide for a negotiating point on getting local issues covered if such a turbine was proposed for the area.

Dave Pestor believes regulations for 100mw+ turbines should be included in the LWEO. Dregne presented arguments against including in the LWEO: 1) are we gaining anything by including it; probably not. Utilities will go to the Public Service Commission and the ordinance regulations will be overridden. 2) A political consideration: at the end of the last session of the State Legislature, adoption of a State statute that would preempt Towns' authority to adopt any ordinances governing wind turbines was considered. Why is this an issue? Dregne has seen situations where industry has taken examples of the ordinances they consider to be "problems" and present those to the Legislature as a reason why they (the Legislature) needs to do something. Basically, legislation is adopted as a response to things that are done/decisions made at a local level. Pestor asked who would handle regulating and enforcing public health and safety issues for 100mw+ turbines if the Town did nothing? Dregne stated that the PSC would be responsible.

Is there anywhere within the town that 100mw+ turbines could be sited? Tom Alisankus stated that the Citizens Committee did not look into this. Could 100mw+ turbines cross townships with regard to siting? Unknown, but probably. Alisankus stated that one issue that came up at the end of the last Legislative session was the possibility of a compromise that would grandfather in local wind energy ordinances that were already on the books.

Dregne stated that a severability clause will need to be added to the LWEO.

Motion to include 100mw+ wind turbines in the draft Large Wind Energy Ordinance made by Doug Lee. Second by Dave Pestor. All in favor: Dave Pestor, Kim Gruebling, Doug Lee. All opposed: Renee Exum, Eric Larsen, Doug Zweizig. Motion does not carry.

The Plan Commission unanimously agreed to retain a separate ordinance to regulate small wind energy.

### **Health & Safety – Definition?**

Zweizig stated that he had received a letter from Brett Davis' office stating that the definition of health and safety is left purposely ambiguous. Larsen feels that it needs to be further defined and specified. Alisankus was of the opinion that if the Commission would like to adopt a definition for health and safety, it may be better to wait until they have fully read and understand underlying issues, such as sound.

What would be parts of a working definition of "health"? Pestor felt that issues affecting the normalcy of life, everyday activities should be included. Lee asked if a person's lifestyle changes drastically, i.e. not spending time outside, windows closed, etc. is it a health issue? Alisankus clarified that one thing the Citizens Committee was concerned with was the fact that something that is a pest or annoyance for one person may be unlivable for others. However, he stated that the definition of "health" is one thing that no one has been willing to nail down, including the Legislature. Alisankus cited a recent legal decision, in which a circuit court said that the Legislature specifically left this area (definition of "health") open and that is how the judge was going to look at it, openly not narrowly.

Dregne cited the World Health Organization Guidelines for Community Noise, which stated that its recommendations were "derived from affects on normal, average population." Lee believes that quality of life is important in this state, which is why they put up concrete walls along the interstate by Madison – to buffer the traffic sounds. Dregne stated

that the point is there is literature available if the Commission is looking for definitions helpful in defining health & safety issues with regard to sound.

Larsen was of the opinion that there were a lot of issues brought up and statements made at the recent public hearing that did not have anything to do with health and safety, such as the survey conducted by EcoEnergy regarding public opinion of siting turbines in the area. Feels the Plan Commission needs to be sure it is addressing health and safety issues; a definition is not necessarily required.

### **Blasting and Road Maintenance Issues; Include in LWEO?**

Lee thinks the issue of blasting needs should be covered in the zoning ordinance. Pestor felt it would be easier if the issues were included in the LWEO; future members of the Plan Commission will be better able to find and understand the regulations and their intent. Dregne stated that the Town will soon have a code of ordinances, which will have all of the Town's ordinances and regulations in one place; this should address the issue of simplifying and locating such restrictions. Gruebling felt the blasting portion of the ordinance is small and it seems it could stay in. Bob Fahey clarified that a permit must be obtained from the county for blasting, and the county regulates it.

Dregne listed all related issues, the location of which need to be determined (LWEO or zoning ordinance): blasting, ground water, stray current/voltage, road maintenance.

### **PAGE BY PAGE REVIEW OF ORDINANCE:**

#### **PAGE 1:**

Dregne noted that the State statute cited in Section I, (A) (1) is a *restriction* on authority, is not *granting* authority. Felt that statutes which grant authority should be added. Exum asked if the description of Wis. Stat. 66.0401 should be removed; Dregne stated it should be. Dregne also recommended changing the statement within Sec. 1 (A) (1) from "...unless the restriction satisfies **one** of the following conditions" to "...unless the restriction satisfies **any** of the following conditions."

Gruebling asked if the statement in Sec. 1 (A) "Emerging energies versus Manitowoc County..." needs to be included, as it is a law now. The case would be referenced if the LWEO was brought to court. Dregne clarified that the ordinance should include factual matters that support why you are adopting the ordinance as you are. The point in question is not a fact that is needed. Alisankus noted that there are more points of reference within the LWEO that may not need to remain in ordinance, considering Dregne's opinion. Zweizig asked if there was any objection to removing Sec. 1 (A) "Emerging energies versus Manitowoc County....?" No objections; statement will be removed.

Dregne suggested developing a term to use throughout the ordinance for wind turbines and a definition of their meaning, which would need to be included in Sec. III Definitions.

Page 1 Sec. I (B): remove "industrial" from statement "...community from industrial wind turbine(s)...". Within statement "...noise by accessing the impact..." the word "accessing" should be replaced with "assessing". Within statement "Noise setbacks from residences will be based..." change "will" to "should". Regarding the German standard referenced, Gruebling would like clarification with regard to the level of government at which the standard was set (i.e. local, county, state, federal), and if it is with regard to indoor or outdoor noise levels? Alisankus will research the statement and let Plan Commission know. Gruebling believes that if this standard applies to just one county or just one state in Germany, it is a lot to hang our hat on as far as referencing in the ordinance. He would think twice about basing our standard on a standard if it was applied by just one state within US, much less another country. Dregne asked with regard to the reference to the 2007 NRC report, page 159, how does that compare to the Guidelines for Community Noise publication from WHO from 1999? Is it consistent with other WHO publications and tables? Dregne asked these questions in an attempt to determine what the best way was for the Plan Commission to determine their standards for noise. Alisankus did not believe that a one page answer on noise standards was possible. Further source information would be provided regarding statements in Sec. I (B).

Exum suggested removing Sec. I (B) altogether; following discussion it was agreed to remove the paragraph in its entirety. Dregne will change Sec. I (A) and (B) to one introductory statement.

## **PAGES 2 -3**

Subsection (a): Gruebling recommends removing "...for example, in Germany..." from paragraph entirely. Following discussion, decision: source the statement, if unable to do so, remove statement. Specifically, want to know where the statement came from, what it means, indoors or outdoors? What does rural residential mean to them (Germany) versus what it means to us (U.S.)?

Subsection (c): Gruebling stated that he has no problem with the definition, but feels it should be moved to the definitions section of the ordinance. Zweizig asked if the statement should be in quotation marks, as it appears to be a quote. Jim Bembinster clarified yes, it should be within quotation marks. Regarding location of the definition, Dregne suggested keeping it in findings section, as it references other studies.

Subsection (d): Zweizig asked if this section should also be within quotation marks. Bembinster clarified yes. The use of the acronym "SPL" needs to be clarified and defined (sound pressure level).

Subsection (e): Quote needs to be clarified.

Exum stated that the ordinance references an NRC report regarding ½ mile setbacks within the ordinance, should that be referenced in the findings section? Dregne stated that it is crucial to include something in the findings section regarding setback and why the distance chosen was selected.

Dregne posed a larger question to the Plan Commission and Citizens Committee: why were both a setback requirement (noise related) and minimum noise requirement included in the ordinance? If someone could demonstrate that the noise would be lower than the noise requirement at a distance less than ½ mile, why would a setback of ½ mile be needed? He believes the findings should address this issue and answer this question. Alisankus clarified that the recommended setbacks address more than just noise, they include other health & safety issues. Dregne stated all issues should be included in the explanation; the factors that specifically led to the setback recommendation. To simplify, include the facts that led to the conclusions, not just the conclusions.

Another issue to consider, according to Dregne, is whether the continued monitoring of sound levels going to be required, or if initial sound modeling will be acceptable.

Paragraph (D): uses both meters and feet as units of measure; convert to feet only.

## **PAGE 4:**

Top of page 4, continuation of paragraph (D): cite studies referenced in the statement "...as outlined in several studies..." Additionally, the "shadow map study" referenced should not be in findings section, per Exum. No objections to removing the sentence "Placement and setbacks sufficient to eliminate these problems will be established by a shadow map study."

Paragraph (G): Gruebling suggested removing the statement "...have no legal basis under Wisconsin law." There were no objections to removing the statement.

Paragraphs (E) & (F): per Dregne, these paragraphs will remain relevant to the ordinance if groundwater issues are addressed within the ordinance; should be removed if groundwater issues are handled elsewhere.

Paragraph (I): Dregne suggested removing the paragraph in its entirety. There were not objections to removing the paragraph.

## **Setback Requirements:**

Gruebling brought up the issue of setbacks and waiving the setback requirements for neighboring properties using an agreement between landowners. He feels this issue needs to be clarified. A larger issue, according to Dregne, is the question of whether or not the Town wants to allow landowners to enter into such agreements, which would circumvent the ordinance and its setback requirements. Gruebling thinks this is an individual decision, if people want to waive the required setback they can do so, it is not the town government's place to regulate this. Feels the option should be available for participating and nonparticipating landowners to have turbines sited closer to their homes and properties than the required setback. Alisankus stated that it was the intent of the Citizens Committee to allow landowners to do this; however governments do have a place in regulating health & safety issues for residents, i.e. seatbelt law. Exum believes the ordinance includes a fair compromise; landowners can decide if they want to change setback restrictions, but the Town recognizes health & safety issues. Dregne felt the Town must decide if noise levels are also subject to such agreements, or only setbacks. In any event, the Town will need to require that something be put on deeds regarding these agreements to notify future landowners in the event land is sold.

Regarding the terms of such agreements, Dregne doesn't think the Town Board should be involved in approving every agreement. A sample agreement could be attached to the ordinance.

To clarify, the Town has no liability with regard to these agreements between landowners, per Dregne.

Gruebling feels the ordinance could allow for reducing the setback requirement to 600' with an agreement to waive the ordinance requirement being made between landowners.

Regarding the property line setback of 1000' and 5 times the rotor diameter: the intent of the Citizens Committee was to have whichever is greater be the governing distance. Larsen questioned the need for the 1000' setback if 5 times the rotor diameter is less than 1000'? Decision: Page 18, Section J (1) (a): "...and at least 5 times the rotor diameter of the turbine..." statement removed.

Exum felt references to EcoEnergy, page 19 second paragraph, should be removed. There were no objections. The remaining paragraph will state: "(Note: The above 1000 foot setback is consistent with the 1000 feet from the nearest property line setback in the Town of Stockbridge, WI. Manitowoc County, WI supports 1000 feet from the nearest property line), and".

Page 19, subsection (b): Gruebling believes that the "total height of turbine" needs to be clarified in definitions, as well as defining where measurements are taken from – base of tower, middle of the actual height of tower i.e. 100' in the air, etc. – when measuring for the 1000' setback. All agreed the issues need to be defined. Alisankus stated that the turbine height is generally the top of the rotor at its highest point.

Gruebling believes that railroads or power companies should be allowed to consent to a lesser setback. How small of a setback? Minimum of 500' or 1.1 times the height of the tower? Lee asked if the railroad would be liable for their employees who work on the line? Dregne clarified that yes, it would be the liability of the railroad company, not the Town. Zweizig suggested that as turbines get larger in height, a distance in feet may not be the best solution. A multiplier, i.e. 1.1 times height, may be a better long term solution. It was agreed that 1.1 times the total height of the turbine would be the minimum setback allowed when an agreement to waive the setback requirement in the ordinance was signed between landowners.

A second working meeting is scheduled for June 17, 2008 at 6:00 p.m. at the Eager Free Public Library. Clerk Ylvisaker will not be in attendance; Attorney Dregne will take notes.

Motion to adjourn made by Eric Larsen, second by Kim Gruebling. Meeting adjourned at 8:57 p.m.

*Respectfully submitted by:*  
*Regina Ylvisaker, Clerk*

Note: Minutes are considered draft until reviewed and approved by the Plan Commission at a properly noticed meeting